REMARKS/ARGUMENTS

The rejections presented in the Office Action dated July 21, 2010 (hereinafter Office Action), have been considered but are believed to be improper. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Applicant notes that the asserted rejection of claims 2, 3, 9-12, 26, 27, 32, 37, 38, and 44-47 detailed on page five is improper and inappropriate since each of these claims was canceled in the Office Action Response filed on July 13, 2009.

Applicant respectfully traverses each of the § 103(a) rejections based upon the teachings of U.S. Publication No. 2005/0038478 by Klepfer *et al.* (hereinafter "Klepfer") as modified by those of U.S. Publication No. 2002/0068959 by Warren *et al.* (hereinafter "Warren") and U.S. Patent No. 7,031,774 to Levine *et al.* (hereinafter "Levine") because the asserted references alone, or in combination, fail to teach or suggest each of the claimed features. For example, the asserted references have not been shown to teach or suggest disabling atrial ATP therapy for delivery in response to measured impedance deviating from an impedance threshold by a predetermined factor indicating dislodgement of the atrial lead, as claimed in each of the independent claims. The Office Action asserts that Klepfer teaches checking "to see if a beat is an abnormal evoked response, if so it then checks for a lead related condition and if a condition is found it disables the ATP therapy". This is incorrect.

In direct contrast, Klepfer teaches that when an abnormal evoked response is detected, therapy is first disabled in order to check for a lead related condition and then is continued once the lead-related change is identified. The last sentence of paragraph [0084] teaches that when a beat is not classified as a normal evoked response, pacing therapy may be temporarily withheld. The following sentence in paragraph [0085] indicates that additional diagnostic procedures, such as diagnosing a lead-related problem, may be performed at step 485 (while therapy is withheld, Fig. 6). After the temporary withholding for one or more beats, during which the lead testing is performed, paragraph [0085] continues by stating that therapy delivery is restarted. Consistent with this, paragraph

[0115] teaches that if a lead-related change is identified, new reference ARIs are acquired, which requires an ATP pulse. Therefore, the ATP therapy cannot be disabled. Since Klepfer teaches temporarily withholding therapy to check for a lead-related condition, Klepfer does not teach or suggest the opposite – disabling atrial ATP therapy in response to measured impedance indicating dislodgement of the atrial lead, as claimed. Without correspondence to each of the claimed features, the § 103(a) rejections are improper.

With particular respect to independent claim 20, the asserted references have not been shown to teach or suggest at least disabling atrial ATP therapy for delivery in response to any of the impedance, capture threshold, and sense amplitude measurements deviating from the impedance, capture threshold, and sense amplitude limits by predetermined impedance, capture threshold, and sense amplitude factors, respectively when the atrial arrhythmia monitoring does not detect atrial arrhythmia during the measuring.

In direct contrast, Klepfer teaches that "the stimulation therapy continues to be administered without change" if a beat is classified as a normal evoked response (asserted as not detecting atrial arrhythmia during the measuring) (*see*, cited Fig. 6 and paragraph [0084]). Klepfer manages therapy delivery based on ARI measurement and does not override the management in view of other measurements deviating from predetermined limits when the ARI evoked response is normal. The relied upon portion of Levine also does not teach or suggest disabling ATP therapy in response to any of the impedance, capture threshold, and sense amplitude measurements deviating from limits when atrial arrhythmia monitoring does not detect atrial arrhythmia, as claimed. While Klepfer may teach managing ATP therapy and Levine may teach measuring an impedance, a capture threshold, and a sense amplitude, the asserted combination does not teach or suggest at least this claimed disabling of ATP therapy when the atrial arrhythmia monitoring does not detect atrial arrhythmia. Without correspondence to each of the claimed features, the § 103(a) rejections are improper.

For each of the reasons discussed above, it is respectfully submitted that the rejection does not account for the claimed disabling of atrial ATP therapy delivery. As

such, the rejection does not account for all elements of independent claims 1, 20, and 36. Reconsideration and withdrawal of the rejection is therefore requested.

With particular respect to dependent claims 63 and 64, Applicant further traverses. Applicant maintains that Klepfer does not teach or suggest delivering a non-atrial tracking pacing therapy for addressing atrial arrhythmia when the atrial ATP therapy is disabled, as claimed. In contrast to the assertions in the Office Action, Klepfer does not teach or suggest switching therapies (page 3) or changing the mode of therapy (page 9). As explained previously, the cited paragraph [0085] merely teaches that the stimulation therapy (that evoked the abnormal response) may be adjusted "by changing the stimulation electrodes, stimulation pulse energy, sensing threshold, or stimulation timing intervals" and restarted. The cited portion refers to adjusting the delivery of a specified therapy and not substituting an entirely different type of therapy as suggested by the Examiner. On the contrary, Klepfer specifically states that "the therapy may be restarted" after "a temporary withholding of therapy for one or more beats, or after adjusting the stimulation therapy" (paragraph [0085], emphasis added).

Switching from an ATP therapy to a non-atrial tracking therapy in response to detection of lead dislodgement is a concept wholly missing from Klepfer. Klepfer's temporarily withholding or adjusting of a stimulation therapy, and then resuming the stimulation therapy, does not account for this concept or even the aspect of switching therapies. Without correspondence to each of the claimed features, the rejection of at least dependent claims 63 and 64 is improper. Applicant accordingly requests that the rejection be withdrawn.

Each of claims 4, 6, 21, 29, 30, 40, 41, and 58 depends from one of independent claims 1, 20, and 36, respectively. Independent claims 1, 20, and 36 are not *prima facie* obvious for at least the reason that the rejection fails to account for all elements of these claims. While no acquiescence is made to the particular rejections of the dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1, 20, and 36. Therefore, withdrawal of the obviousness-type rejections of claims 1, 4, 6, 13-15, 18, 20, 21, 29, 30, 33, 36, 39-41, 48-50, 53, 55, 58, 60,

63, and 64 and notification that these claims are in condition for allowance is respectfully requested.

To the extent that the current response does not respond to any characterization in the Office Action of the asserted art or of the claimed subject matter, or to any application in the Office Action of the asserted art to any claimed subject matter, it is stated for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Office Action's characterizations, or any other assertions or statements beyond that provided above is unnecessary in view of the present response. The right to address in detail any such assertions or statements in the future is reserved. It is respectfully submitted that the application is in condition for allowance, timely notification of which is kindly requested.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.014US01) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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